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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,963	12/03/2003	David Ernest Hartley	PA-5351-RFB	4386
9896 7590 04/18/2007 COOK GROUP PATENT OFFICE P.O. BOX 2269 BLOOMINGTON, IN 47402			EXAMINER KOTINI, PAVITRA	
			ART UNIT 3731	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/726,963

Applicant(s)

HARTLEY ET AL.

Examiner

Pavitra Kotini

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 15 and 16 is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This Office Action is in response to Applicant's amendment received on 1/22/07.

Amendments to claims 1-12 and cancellation of claims 13 and 14 is acknowledged.

#### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-5, 7, 9-12** are rejected under 35 U.S.C. 102(e) as being anticipated by DePalma et al. (US-2002/0058985).

Regarding **claim 1**, DePalma discloses a plurality of self expanding stents (12 and 40) *linked together by links* (54, 56; para.0126) defining an elongate substantially cylindrical lumen wall engaging surface (fig. 1) and at least one of the stents (40) having a biocompatible graft material cover (para.0108-0109) *thereby* defining a covered *stent* portion (11a, b) *and an uncovered stent portion* (10a, b), whereby the cover is capable of closing off a rupture in the wall of the lumen (para.0122) without any further modification and the stent is capable of providing pressure on the wall of the lumen (para.0100-0103) adjacent to and extending away (fig.1) from the rupture.

Regarding **claim 2**, DePalma discloses the cover encompasses at least two of the plurality of stents (para.0120) and the cover is stitched or otherwise fastened to the stents in the covered *stent* portion (para.0119).

Regarding **claim 3**, DePalma discloses the covered *stent* (40) portion of the prosthesis (11a, b) is inherently capable of being at the proximal end of the plurality of stents because the graft portion can be on either end of the stent para.0121).

Regarding **claim 4**, DePalma discloses uncovered *stent portion* (10a, b) extend away (fig. 1) from the covered portion (11a, b) and *the stents* (12) *of the uncovered stent portion* (10a, b) are linked by flexible links (para.0126-0133).

Regarding **claim 5**, DePalma discloses uncovered *stent portion* (10a, b) extends away from the covered *stent* portion (11a, b) and the *stents* (12) *of the uncovered stent portion* (10a, b) are linked by a thread or fiber threaded through bends of the stents (para.0088-0093).

Regarding **claim 7**, DePalma discloses a proximal end of the covered portion of the prosthesis includes barbs (20) extending from a stent (12) of the *plurality of stents* through the cover to engage with the wall of the lumen when deployed (fig.1).

Regarding **claim 9**, DePalma discloses the uncovered portion is in the form of a self expanding spiral stent (12) of zig-zag configuration (fig.2).

Regarding **claim 10**, DePalma discloses a cylindrical body in an expanded state (fig.1) *comprising at a proximal end thereof* having at least one self expanding stent (40) covered by a bio-compatible graft material (60) and *an uncovered* self expanding stent assembly (10a, b) extending from a distal end thereof (102) *wherein the uncovered self expanding stent assembly* (10a, b) *comprises self expanding stents* (12) *linked together by links* (para.0127).

Regarding **claim 11**, DePalma discloses barbs (20) extending from a stent (12) at the proximal end (101).

Regarding **claim 12**, DePalma discloses the self-expanding stent assembly extending from a distal end of the biocompatible graft material is formed from a biocompatible and biodegradable mesh material (col.9, lines 5-10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over DePalma et al. (US-2002/0058985) in view of Nobles et al. (US-20020049453).

DePalma discloses substantially as claimed above in claim 5 and 1 and furthermore discloses the thread or fiber is connected to each bend by a knot (para.0089), but fails to disclose a particular type of knot.

However, Nobles teaches suturing using a half hitch knot. This type of knot would have the apparent advantage of assisting in linking two elements together or for placing one knot on top of another. Therefore, it would have been obvious to a person of ordinary skill in the art to modify the suture of stents together as disclosed by DePalma by using a half hitch knot as taught by Nobles.

**Claim 8** rejected under 35 U.S.C. 103(a) as being unpatentable over DePalma et al. (US-2002/0058985).

DePalma discloses substantially as claimed above in claim 1 and furthermore a plurality of stents (12 and 40), wherein each of the stents being of the zig-zag type (50; fig. 2 and 4), and constructed from stainless steel or Nitinol (para.0107),and discloses that the system could include one or *more* stents (para. 0062), but fails to disclose the precise number of stents in the covered and uncovered portions.

However, it would be obvious to a person of ordinary skill in the art at the time of the invention to adjust the number stents in the covered and uncovered portions according to various factors such as the size of the rupture, the size of the patient, as evidenced by applicant's specification (pg. 10, lines 18-21).

### ***Response to Arguments***

Applicant's arguments, filed 1/22/07, with respect to the rejection(s) of claim(s) 1-12 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the added limitation of links to independent claims 1 and 10. Applicant's arguments with respect to independent claims 2-9 and 11-12 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pavitra Kotini whose telephone number is 571-272-0624. The examiner can normally be reached on M-F 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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**ANH TUAN T. NGUYEN**  
**SUPERVISORY PATENT EXAMINER**  
